

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of)
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U.S. Patent No. 5,411,466)
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Robert L. HESS)
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Issued: May 2, 1995)
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Serial No.: 08/219,179)
)
Filed: March 28, 1994)
)
Title: APPARATUS FOR RESTENOSIS)
TREATMENT)

DECLARATION AND POWER OF ATTORNEY

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

1-60
I, Robert L. HESS, the above-named inventor, hereby declare that:

I am a citizen of the United States, and my residence is 35 Tages Court, Portola
Valley, California 94025. *CA*

I verily believe myself to be the original, first inventor of the invention described and claimed in U.S. Letters Patent No. 5,411,466 ("the '466 patent") and for which invention I solicit a Reissue Patent.

I have reviewed and understand the contents of the specification and the claims of the Reissue Application. I have also reviewed and understand the contents of the original

specification of Serial No. 08/219,179, filed March 28, 1994 as a continuation of Serial No. 07/755,480 filed September 5, 1991.

I do not know and do not believe that said invention was ever known or used in the United States of America before my invention thereof.

I acknowledge my duty to disclose all information known to me which is material to patentability as defined in Title 37, Code of Federal Regulations, Sec. 1.56.

PETITIONER further declares the following:

I verily believe the '466 patent may be at least partly inoperative or invalid for the reason that I claimed less than I had a right to claim in the '466 patent.

The error in claiming less than I had a right to claim in the '466 patent was discovered as a result of discussions between myself and my attorney, Peter K. Skiff, during April and May of 1997. During these discussions, it was discovered that Claim 1 of the '466 patent may be unduly limiting by reciting in lines 12-13 that the positioning means includes an angioplasty balloon. Petitioner now realizes that it was error not to include in the original patent, claims which are not limited to a positioning means including an angioplasty balloon. Petitioner also now realizes that it was error to not specifically claim various advantageous aspects of the disclosed invention.

New Claim 6 is similar to Claim 1 of the '466 patent but omits the feature of the angioplasty balloon. New Claims 7-9 recite that the dose means is in solid form, liquid form and gaseous form, respectively, features disclosed at column 4, lines 4-12 of the '466 patent. New Claim 10 is similar to Claim 1 of the '466 patent but omits the feature of the angioplasty balloon, recites --a radiation source-- rather than "radioactive dose means for emitting radiation" and recites --a catheter-- rather than "positioning means". New Claims 11-13 recite that the radiation source is in solid form, liquid form and gaseous form, respectively, as disclosed at column 4, lines 4-12 of the '466 patent. New Claim 14 recites that the catheter includes a balloon as disclosed at column 3, lines 41-59 of the '466 patent. New Claim 15 recites that the catheter includes a first lumen in fluid communication with the balloon as disclosed at column 3, lines 45-54 of the '466 patent. New Claim 16 recites that the catheter includes a second lumen in fluid communication with perfusion holes which allow perfusion of blood in the artery during inflation of the balloon as disclosed at column 2, lines 53-58 and column 3, lines 45-51 of the '466 patent. New Claim 17 recites that the radiation source provides a radiation dose to the stenosed region sufficient to retard proliferation of smooth muscle cells at the stenosed region as disclosed at column 2, lines 13-20 and column 4, lines 54-66 of the '466 patent. New Claim 18 recites that the catheter comprises a balloon catheter capable of performing angioplasty and the post-treatment as disclosed at column 2, lines 53-58 and column 4, line 55 through column 5, line 2 of the '466 patent. New Claim 19 recites that the catheter is capable of reducing the stenosed region and performing the post-treatment as disclosed at column 4, line 55 through column 5, line 2 of the '466 patent.

After becoming aware of the aforementioned errors, the present application for reissue of the '466 patent was promptly prepared.

2 I hereby appoint James W. Peterson, Registration No. 26,057 and Peter K. Skiff, Registration No. 31,917 as my principal attorneys, with full power of substitution and revocation, to appoint other principal and associate attorneys, to prosecute this application, and to transact all business in the Patent and Trademark Office connected with this application.

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Dated:

2 May 97

By:

Robert L. HESS